

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE:

BRANDON HEITMANN

Debtor

**Case No. 24-41956-mar
Chapter 13
Hon. Mark A. Randon**

ALEX BOYD and REBECCA BOYD

Plaintiffs

**Adversary Proceeding
Case No.**

v.

BRANDON HEITMANN

Defendant/Debtor

LAW OFFICES OF JOHN F. HARRINGTON

BY: John F. Harrington (P40443)

Attorney for Plaintiff

30500 Van Dyke Ave., Ste. 200

Warren, MI 48093

(586) 751-3610

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Robert N. Bassel (P48420)

Attorney for Debtor Heitmann

P.O. Box T

Clinton, MI 49236-0000

(248) 677-1234

bbassel@gmail.com

COMPLAINT TO DENY DISCHARGE

NOW COMES the Plaintiffs, Alex Boyd and Rebecca Boyd, husband and wife, by and through the Law Offices of John F. Harrington, and by way of Complaint to Deny Discharge, hereby states as follows:

1. That, Plaintiffs, Alex Boyd and Rebecca Boyd, are husband and wife, residing in the

Township of Macomb, County of Macomb, State of Michigan, as well are Creditors in the Chapter 13 Bankruptcy Proceeding of Defendant, Brandon Heitmann.

2. That, Defendant, Brandon Heitmann, is an individual residing in the Township of Washington, County of Macomb, State of Michigan, as well as the Debtor in the underlying Bankruptcy case.

JURISDICTION AND VENUE

3. That, Plaintiffs brings this cause of action pursuant to 11 USC Sec. 523(a)(2)(A); 11 USC Sec. 523(a)(2)(b); 11 USC Sec. 523(a)(4), and 11 USC Sec. 523(a)(6), seeking to determine that Defendant's debt to the Plaintiffs is non-dischargeable under the aforementioned federal statutes.

4. That, this Honorable Court has jurisdiction over this Adversary Proceeding pursuant to 28 USC Sec. 1334, as well as pursuant to 28 USC Sec. 157.

5. That, venue lies in the Eastern District of Michigan, pursuant to 28 USC Sec. 1408(1) and 28 USC Sec. 1409(a).

STATEMENT OF FACTS

6. That, Plaintiffs are the owners of real property at 50639 Cheltenham Drive, in Macomb Township, Michigan.

7. That, on or about May 6, 2021, Plaintiffs entered into a contract with Exigent Landscaping, LLC, for the design and construction of an in-ground swimming pool at Plaintiffs' residence. (See Exhibit A)

8. That, during this time frame, representations were made to Plaintiffs by the Defendant, the sole member of Exigent Landscaping, LLC, as well as others, that both himself and Exigent Landscaping, LLC, were licensed residential builders.

9. That, the May 6, 2021 contract even states at the bottom of each page, "License #802082183", inferring that Exigent Landscaping, LLC, was a licensed residential builder.

10. That, in fact, neither Defendant nor Exigent Landscaping, LLC, were licensed residential contractors during its relationship with the Plaintiffs.

11. That, after execution of the contract and during the permit application process, unbeknownst to Plaintiffs, the Defendant knowingly and falsely represented to Macomb Township Building Officials that Plaintiffs contracted with licensed residential builders Construction Contractors, LLC, and Henry Girard Bell.

12. That, based on said false representations, Macomb Township Building Officials approved permits for the construction of an in-ground swimming pool at Plaintiffs' residence.

13. That, Plaintiffs paid the substantial portion of the contract price to Exigent Landscaping, LLC.

14. That, Defendant and his business, Exigent Landscaping, LLC, failed to properly construct a swimming pool, necessitating removal of the pool and otherwise causing substantial monetary damages to be suffered by the Plaintiffs.

COUNT I

DETERMINATION THAT DEBT IS NON-DISCHARGEABLE PURSAUNT TO USC SEC. 523(a)(2) and (b), 11 USC SEC. 523(a)(4), and 11 USC SEC. 523(a)(6), FOR BREACH OF CONTRACT

15. That, Plaintiffs hereby restates and reiterates the allegations contained in paragraphs 1 through 14 as if fully restated herein.

16. That, as set forth in the Statement of Facts, Defendant, as sole member of Exigent Landscaping, LLC, owed a fiduciary duty to Plaintiffs, including but not limited to, duty of fair and honest dealings.

17. That, however, Defendant violated said fiduciary duty by falsely representing to Plaintiffs, and others, that he and his business were licensed residential builders, and otherwise competent to install an in-ground swimming pool.

18. That, Plaintiffs provided and otherwise fulfilled all of their conditions, covenants, and promises required to meet all obligations due and owing to the Defendant and his business, yet Defendant engaged in multiple breaches of said obligations due and owing to the Plaintiffs, causing monetary damages to the Plaintiffs.

19. That, as such, Plaintiffs are entitled to have Defendant's debt to the Plaintiffs determined to be non-dischargeable, pursuant to 11 USC Sec. 523(a)(2)(A); 11 USC Sec. 523(a)(2)(B); 11 USC Sec. 523(a)(4); and 11 USC Sec. 523(a)(6).

WHEREFORE. Plaintiffs, Alex Boyd and Rebecca Boyd, hereby prays this Honorable Court enters an Order finding that Defendant, Brandon Heitmann, is not entitled to discharge debts due and owing to Plaintiffs.

COUNT II

DETERMINATION THAT DEBT IS NON-DISCHARGEABLE PURSUANT TO 11 USC SEC. 523(a)(4) and 523(a)(6)

20. That, Plaintiffs hereby restates and reiterates his allegations in paragraphs 1 through 19 as if fully restated herein.

21. That, as set forth in the Statement of Facts, the Defendant deliberately and falsely represented to Plaintiffs that both himself and his company, Exigent Landscaping, LLC., were licensed residential builders and otherwise competent contractors capable of installing an in-ground swimming pool.

22. That, Defendant's representations were made with the intent to induce Plaintiffs to enter into a contract with Exigent Landscaping, LLC.

23. That, Defendant's representations were, in fact, false, made with the intent to deceive Plaintiffs.

24. That, Plaintiffs were unaware of the Defendant's false representations and relied to

their detriment on these misrepresentations.

25. That, based on Defendant's intentional misrepresentations to Plaintiffs, the debt owed to them by the Defendant must be determined nondischargeable pursuant to 11 USC Sec. 523(a)(4) and 11 USC Sec. 523(a)(6).

WHEREFORE. Plaintiffs, Alex Boyd and Rebecca Boyd, hereby prays this Honorable Court enters an Order finding that Defendant, Brandon Heitmann, is not entitled to discharge debts due and owing to Plaintiffs.

LAW OFFICES OF JOHN F. HARRINGTON

Date: September 5, 2024

**By: /s/ John F. Harrington
John F. Harrington (P40443)
Attorney for Plaintiffs,
30500 Van Dyke Avenue, Suite 200
Warren, Michigan 48093
(586) 751-3610 phone/(586) 751-3612 fax
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EXHIBIT A



Landscaping Estimate

Date: 05-08-21

Rebecca and Alex Boyd
50639 Cheltenham Dr.
Macomb Twp., MI 48044
(586) 601-4648

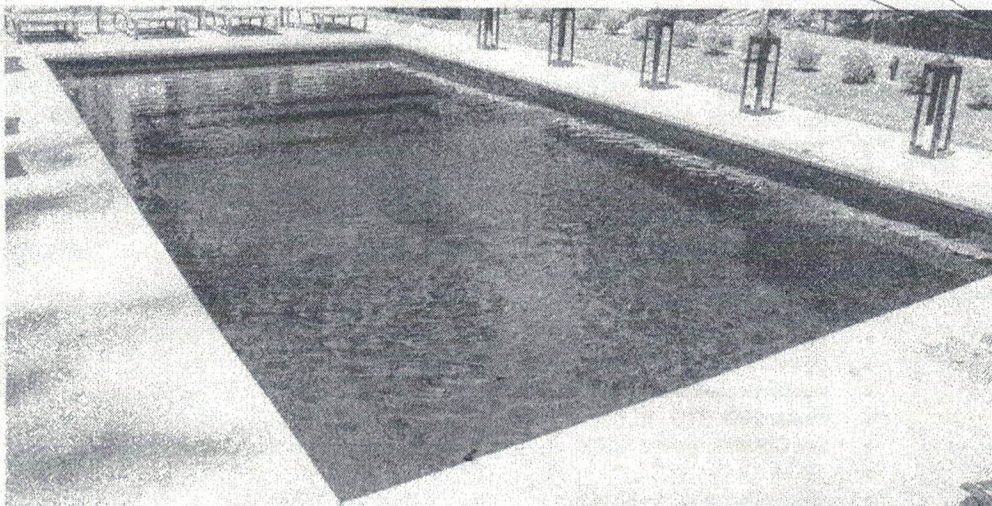
Dear Rebecca,

Thank you for the opportunity to submit the following quotation. We would love to get this project on our schedule. Listed below is a complete breakdown of the scope of work.

Scope of Work

Preparation - \$1,500

- Remove existing patio
- Haul away and dispose of all materials
- Switch gate position of gate on south side of house



Illusion by Imagine Pools

Fiberglass Swimming Pool - \$88,203

- Pool in picture above is the pool we quoted other features in picture not included unless specified below.
- Imagine Pool, Illusion 35
 - Size: 35x15.5', depth 4'4" to 6'6"
- Includes 2 skimmers, 2 main drains, and return fittings - \$31,900
- Delivery of pool, crane operator - \$9,000
- Installation, dig hole, remove all dirt - \$8,500
- Pea Gravel backfill and underpool for drainage
 - 120 tons = \$5,800
- Concrete flatwork including pad for equipment tie rebar into pool structure for under brick pavers
- Coping: Cantilever coping approx. 105 linear ft. = \$2,415
- Area of white concrete for pool equipment pad = \$800

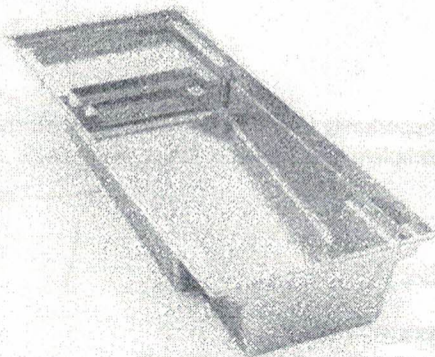
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- Permits and plans for city for pool= \$2,500
- Extra ~\$1,500 if survey needed for city, not included in total price

Plumbing - \$6,988

- Plumbing equipment pad also skimmer, return and main drains - \$6,500
- 200 feet of 2" flex line= \$488



Illusion Shell by Imagine Pools

Electrical/Gas \$7,000

- Run electrical and wire in all pool equipment, pass all inspections, pull permits. \$4,500
- Trench conduit for electrician 18" deep trenched \$500
- Trench as line 18" for boiler \$500
- Licensed plumber come in run gas line pass depth test/air test \$1,500

Pool Equipment/Accessories - \$13,300

- Cartridge filter= \$950
- 1.5 HP Variable speed pump= \$1,200
- (3) LED lights= \$850 x 3= \$2,550
- Intellibrite controller for lights= \$350
- Heater 200k BTU - \$2,500
- Salt Chlorine system \$2,200
- Automation system - \$2,500
- Automation setup so every feature is controlled from cell phone app - \$500
- Mesh cover with anchors, material + install
- Pool Vacuum

Concrete - \$17,612.50

- Frame for concrete slabs
- Install base rock and compact
- Install rebar/wire
- Pour concrete into the mold
- Screed the top of the concrete
- Float concrete surface to compact
- Make control joints every 5 to 6 feet with groover

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- Slope will be away from home

- Type of concrete:

- Dyed concrete

Dimensions:

1. Pool deck: Level with grade, retaining wall installed in back and on sides to handle slope
 - a. Approx. 1,325 sq. ft. x \$11.50= \$15,237.50
 - b. Retaining wall to support slope: Approx. 65 phase ft. x \$25= \$1,625
 - c. Steps: Approx. 30 phase ft. x \$25= \$750

Stain & seal existing walkway - KLY

AB

Fence - \$4,900

- Price below includes material, delivery, and labor to install fence and installing pins into concrete
- Water Warden pool fence safety system
 - Need 10 sections
- Plus 1 Water Warden gate

Finishing Touches - \$1,500

- Re-sod backyard and fix/reroute all sprinkler lines
- Clean up property of all trash, blow away all unwanted debris, sweep/wash debris of patio/walkway(s)

****This proposal Includes a mesh cover with anchors and installation, and includes a Robot Vacuum (usually additional \$7,500 for both, only additional \$4,259.50 with this deal)**

Includes power wash/seal front walkway approx 80 sq foot

- Total investment before discount - \$117,425
- -\$3,975 Discount with \$55,000 down upon signing
- Total investment after Discount - \$113,450

Homeowner's Initials Acknowledging Total Investment+Progress Payment Schedule

PROGRESS PAYMENTS*

- Down payment to book spot in line - \$55,000
- Progress payment: 1-2 weeks before work is started on site - \$25,000
- Progress payment: Pool is delivered - \$20,000
- Progress payment: Concrete is delivered - \$7,000
- Final payment upon completion - \$6,450 + any additional add-ons added on after initial contract signing

*Note that if for any progress payment homeowner chooses to pay with a credit card, there will be an additional 3% convenience fee added to amount.**

**The 3% fee is an additional fee and does not count towards the rest of the progress payments.

Terms & Conditions of this quote, as well as any change order thereafter-

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These terms & conditions protect Exigent Landscaping, LLC as well as the homeowner if any issues should arise.

Please review carefully.

General Contract Terms:

1. Exigent's employees stand behind all their work, if any problems with install come up, contact us.
2. Add-ons/extras must be paid upon completion or immediately.
3. Both parties are entitled to a filled out copy of agreement, signed by homeowner and contractor.
4. By signing, homeowner agrees to everything stated in contract.
5. If there is a change order, a revision will be sent through email.
6. Before work is started on property, Exigent will call Miss Dig to mark utilities. Please do not disturb these markings as they are important to us to know where these utilities are at time of project. If any sprinkler lines are damaged by Exigent we will fix it and homeowner will not incur cost. We are not liable for any other damaged utility lines, including but not limited, to cable, gas, water, etc.
7. If an item is not stated in this contract, it is NOT included. Nothing in designs are included if they are not listed on here, ex. Outdoor furniture, coping on steps, etc. Designs only provide homeowner with a vision, they are never 100% exact.
8. All prices in any contract provided by Exigent are only good for 30 days from the date listed in the top right corner of front page of quotes. After 30 days, prices may rise due to changes in gas prices, material prices rising, etc.
9. Return check fee= \$40
10. For any interior work, Exigent asks homeowner to please remove all valuables from room and cover any furniture with plastic/tarps as dust/debris may collect during work.
11. If an item/service listed in this contract can no longer be performed/purchased by Exigent once job is started for whatever reason, Exigent is no longer liable to perform/purchase item/service and homeowner will be notified and fully refunded for that item/service. Ex. if type of paver(s) get discontinued, etc.
12. Exigent is not responsible for pets that get loose. Exigent is also not responsible if they hit an invisible fence line. This must be marked out by homeowner before Exigent initiates work.
13. Exigent will clean up job sites end of day as best as possible, however, homeowner's property/surrounding area(s) will not be cleaned up 100% until Exigent is completely finished with the job.
14. If another contractor/company is ever present during the course of Exigent's working period, Exigent can not be held liable for any damage that occurs to the homeowner's property.
15. If a permit/architect plan payment is not listed above, but becomes needed at any point during project, a charge will incur a minimum of \$150 to a maximum of \$3,000 depending on size of project.
16. In pool quotes, water is not included in the quote. We will fill pool with homeowner's water. Covers are also not included unless stated otherwise in pool section of quote.
17. Exigent is not responsible for soil bearing capacity. We strongly encourage homeowner to hire a geo technical engineer before Exigent starts work.
18. If city/HOA/engineer/etc. ever requires extra work/material needed to be done to scope of work that is not listed in the contract above, Exigent is not responsible for the extra fees.
19. We are not responsible for patio drainage.
20. If there is a high water table on homeowner's property, Exigent is not responsible for pumping fees.
21. If final payment, including payment of all change orders, is not received on the day of completion, payment is subject to late fees. If payment is not received after 30 days, Exigent is subject to place a lien on homeowner's property. If at any point during the project a progress payment is not paid, Exigent reserves the right to commence work until payment is received.
22. We are not responsible for HOA approval.
23. Down payments are non-refundable.
24. Agreeing to a price or add-on via text message or email omits the need for a signature for that particular item/change order.
25. I will allow Exigent Landscaping to use pictures of my property for marketing purposes indefinitely. The pictures will only be taken on the property while work is being done to show the progress of the job and the

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- only pictures taken after work is completed will be taken when Exigent/Brandon has permission to enter property.
26. Once contract is signed, homeowner agrees to make no changes to contract that will lower the contract signing price by 20% or more.
 27. Unknown conditions are not Exigent's responsibility.
 28. All claims and disputes arising under or relating to this Contract are to be settled by binding arbitration in the state of Michigan or another location mutually agreeable to the parties. An award of arbitration may be confirmed in a court of competent jurisdiction.

Materials:

1. Materials cannot be changed once purchased by Exigent. Location of patio, ledgerrock, limestone, etc. cannot be changed once base has begun to be dug by Exigent. If homeowner no longer wants material that was already purchased, homeowner is responsible for return fee.
2. If more material is needed for any scope of work, sqft or cost per item will be re-measured and multiplied by amount charged.
3. Any leftover materials/tools are property of Exigent. In many cases we have to purchase full pallets of brick, or an even tonnage of limestone from our supplier, but the homeowner is only paying for what is listed on quote/invoice.
4. All concrete types (white, stamped, and aggregate) are mixed on site before being poured by our concrete company. Color will almost never be exact as color promised, however 90% of time concrete will be very similar. Exigent is not responsible if color is not exact. Patio/walkway/etc. will be installed as is. If color is not to homeowner's standards, Exigent is not responsible to rip out patio/walkway/etc. or pay for new concrete load.
5. Plant sizes and/or species may have to be substituted upon availability.
6. If homeowner purchases any material, we are not responsible for the trash/debris associated with that material. As well as if homeowner has other contractor(s) on site, we are not responsible for their trash/debris.

Warranties:

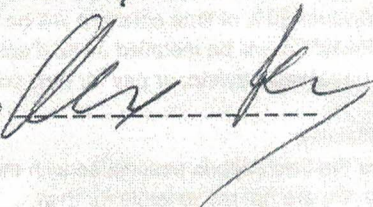
1. Exigent is not responsible for any weeds after install. Weedblock/landscape fabric is not a guarantee.
2. It is homeowner's responsibility to maintain all aspects of landscaping after install. A professional company should be hired afterwards to maintain all living items such as trees, shrubs, etc. as well as any maintenance needed/desired for hardscape.
3. Exigent is not responsible for damage to existing concrete driveways/sidewalks/walkways on homeowner's property. Exigent's machines are made to not crack cement, however, if the cement does crack that means the base was never installed properly and Exigent cannot be held responsible.
4. Exigent warranties white concrete/exposed aggregate/stamped concrete for 1 month after install.
5. Exigent provides a 3-year limited warranty on brick paver labor. If a brick paver itself cracks or is damaged, all manufacturers have a lifetime warranty and Exigent will just charge a \$95 service fee for labor to come out to replace it. The warranty covers settling and paver shifting. Warranty does not cover self-inflicted damage, salt damage, or causes by natural disaster(s).
6. Some paver blocks may tend to chip. Exigent is not responsible for any chips in block. Unfortunately, we have no control over the pallet choice at our supplier. However, we will do our best to hide chips in block.
7. Exigent does not manufacture its brick pavers, therefore, if paver(s) produce efflorescence Exigent will not be held liable and they will not compensate homeowners for new pavers nor will they re-install new ones without charging for additional labor and materials. However, Exigent will help homeowner coordinate with Pavers' Manufacturer to see what the Manufacturer can do for homeowner.

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8. Exigent provides a 1 year warranty on all composite decks. The warranty covers only issues with labor that arise, this warranty does not cover physical damage to deck, damage to wood, or damage caused by natural disasters or self-inflicted damage.
9. In-lite lights come with a 3-year limited warranty. Exigent warranties their labor in installing them for 1 year. Warranty doesn't cover physical damage, self-inflicted damage, damage caused by natural disasters, or water damage.
10. There are no warranties on plants/shrubs/trees/flowers.
11. There is no warranty on re-planted/transplanted plants/shrubs/trees/flowers.
12. There are no warranties on sod/seed and straw.
13. Exigent is not responsible for any rotting wood after install.
14. Exigent is not liable for any damage caused to any scope of work due to natural disasters.
15. Warranties on all products bought from suppliers, other than pavers and paver block, such as outdoor fridges, outdoor/indoor fireplaces, outdoor sinks, etc. all follow original manufacturers' warranties. Exigent does not provide any extra warranty on these products.
16. Any and all invoices not paid in full will result in no warranty on work completed by Exigent.

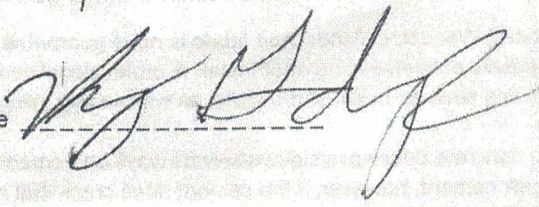
Homeowner's Signature (as well as initial on investment amount):

Name Alex Boyd Date: 05-14-21

Signature 

Exigent's Salesman's Signature:

Name Kody Grandhamp Date: 5-14-21

Signature 

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Phone: (586) 383-8308